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Ms. Jennifer J. Johnson
Secretary
Board of governors of the Federal Reserve System
20 and C Streets, NW
Washington, D. C. 20051

March 30, 2009

RE: Docket Number R-01343
Proposed changes to Regulation E
Electronic Fund Transfer Act
74 Federal Register 28866

Dear Ms. Johnson:

Southwest Bank is a Texas-chartered, insured, member community bank located in Fort Worth, Texas. As of February 28, 2009, we had total assets of approximately \$700 million with 12 branches serving the Dallas/Fort Worth metroplex.

We appreciate the opportunity to comment on the Federal Reserve Board's ("Board") proposed amendments to Regulation E, which implements the Electronic Fund Transfer Act ("EFTA"), published January 29, 2009 in the *Federal Register*.

Our bank has always exercised some discretion to cover overdrafts for certain customers. Today we exercise that discretion using a safe and sound program that extends our ability to cover inadvertent overdrafts to a majority of our customers. Our overdraft accommodation practices are successful because they provide desirable back-up for customer payment decisions, and they are sustainable because people want the bank to recognize that when they inadvertently overdraw their account they can be trusted to make it right and are prepared to pay for the bank's accommodation.

We agree with the Board that Regulation E is the appropriate regulation to address overdraft accommodation programs. To ensure that customers continue to have choices and access to a service the Board's testing showed customers expect and value, we recommend that the final rule permit banks latitude when providing an election not to cover debit card transactions in overdraft accommodation programs—permitting either an account level opt-out or a partial opt-out limited to debit card transactions that properly recognizes how debit cards are used and processed. In addition we urge the Board to allow banks to satisfy the opt-out requirement by offering alternative accounts that are reasonable or customary.

Today, debit cards—also often called "check cards"—enable bank customers to make individual purchases and to pay bills separately or even on a recurring basis. By the same token, unexecuted debit card bill payments due to insufficient funds are as likely as bounced checks to incur merchant and payment recipient late fees. Therefore, banks should be allowed to offer customers a single account-wide opt-out for overdraft accommodation that sensibly places the emphasis on customer **account** management, not **payment method** management—especially when the different devices are used interchangeably to conduct the same types of transactions. This emphasis on account level treatment puts overdraft accommodation on the same plane as other types of overdraft protection—e.g., linked deposit accounts, line of credit, or credit card back-up—all of which are applied across the account independent of the payment method used to conduct the transaction. Whether one overdraws into a

line of credit by use of a debit card or by a check, the treatment is the same. Overdraft accommodation programs should be allowed to be on a similar all-in or all-out footing.

At the present time, our Bank lacks the technology to implement a partial opt-out regime and can only offer an overdraft program to our customers as an all-or-nothing service. If our customers do not opt-out of our program, it will accommodate all their transaction types. If the partial opt-out or opt-in rules are adopted, it may compel our Bank to cease our overdraft program. In this very competitive market, we may lose customers to the larger institutions with more advance technology and a lower cost per customer to implement technology changes.

To avoid customer confusion, the final rule must make clear that declining overdraft debit card services applies to *all* debit card transactions, not just purchases, and that customers understand that it applies to purchases, bill-pay, and other transactions. After all, there are so many variations in how and where debit cards may be used and how they are processed, that it would be difficult if not impossible to explain the nuances and variations in a manner customers will understand. On the other hand, we think that they will easily understand "debit card transactions" with an explanation that it includes both purchases and bills paid using the debit card or debit card number.

Automated overdraft accommodation is an innovation that benefits the vast majority of customers who are covered by it and value its presence when they inadvertently err in their otherwise responsible account behavior. Therefore it warrants being applied in opt-out form so that the minority who choose to decline its benefit may act on that preference without disadvantaging the majority of customers or the payment system itself.

We appreciate the Board's recognition that there are legitimate reasons for account terms or conditions to vary depending on whether the customer has or has not declined overdraft services. We also understand and agree that any flexibility to vary terms or conditions not permit banks to circumvent the right to decline overdraft services by providing an illusory choice that would be overwhelmingly unattractive to most customers. A requirement that account alternatives be "customary" or "reasonable" would discourage terms that would render the right to decline overdraft services meaningless or illusory.

We encourage the Board to recognize the evolving nature of electronic payments and the need to continue to place the responsibility for account management on the accountholder. Whether transactions settle in near real-time or by daily batch processing, the customer is still the only one who knows what transactions they have conducted. We firmly believe that to best benefit the customer, banks must be allowed to implement their discretionary overdraft accommodation programs in opt-out form so that the minority who choose to decline its benefit may act on their preference without disadvantaging the majority of customers who strongly desire this protection.

Sincerely,



Lianne Davidson
General Counsel

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